IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

JOE DAVIS MARTIN V. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 96-A-155 J. Randall Wyatt, Jr., Judge

No. M2005-02143-CCA-R3-CO - Filed March 3, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. The petitioner has appealed the trial court's order dismissing the petition for writ of error coram nobis. Upon review of the record in this case, we are persuaded that the trial court was correct in dismissing the petition and that this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Joe David Martin, Pro Se, Tiptonville, Tennessee

Paul G. Summers, Attorney General & Reporter; Elizabeth Bingham Marney, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

The defendant was convicted by a jury of one count of first degree murder, attempted first degree murder and attempted second degree murder stemming from a drive-by shooting. State v. Ladonte Montez Smith, No. M1999-00087-CCA-R3-CD, 1999 WL 1210813, at *16 (Tenn. Crim. App., at Nashville, Dec. 17, 1999). The petitioner was sentenced to life with possibility of parole for the first degree murder, a twenty-year sentence for his attempted first degree murder conviction and a ten-year sentence for his attempted second degree murder conviction. Id. at *17. The ten-year and twenty-year sentences were ordered to be served concurrently to each other, but consecutively

to the life sentence. Id. at *60. The petitioner appealed his convictions and his sentence to this Court. We affirmed the judgment of the trial court.[1] Id. at *23.

The petitioner subsequently filed a petition for post-conviction relief based on allegations that the State withheld exculpatory evidence, the State failed to correct perjured testimony at trial and ineffective assistance of counsel. The post-conviction court denied the petition. The petitioner then appealed to our Court. Joe Davis Martin v. State, No. M2003-00534-CCA-R3-PC, 2004 WL 438328 (Tenn. Crim. App., at Nashville, March 10, 2004). We affirmed the decision of the post-conviction court.

On July 25, 2005, the petitioner has most recently filed a petition for writ of error coram nobis. In this petition the petitioner claimed that there is newly-discovered evidence consisting of an informal recantation by a trial witness. To support this claim, the petitioner has attached a letter sent to him by a friend, purportedly written by the witness in question to a third party. The trial court dismissed the petition without a hearing because it was time-barred and because the petitioner had questioned the veracity of this witness in both his direct appeal and appeal from the denial of his post-conviction petition.

Analysis

Relief by petition for writ of error coram nobis is provided for in Tennessee Code Annotated section 40-26-105. That statute provides, in pertinent part:

> The relief obtainable by this proceeding shall be confined to errors dehors the record and to matters that were not or could not have been litigated on the trial of the case, on a motion for a new trial, on appeal in the nature of a writ of error, on writ of error, or in a habeas corpus proceeding. Upon a showing by the defendant that the defendant was without fault in failing to present certain evidence at the proper time, a writ of error coram nobis will lie for subsequently or newly discovered evidence relating to matters which were litigated at the trial if the judge determines that such evidence may have resulted in a different judgment, had it been presented at the trial. The issue shall be tried by the court without the intervention of a jury, and if the decision be in favor of the petitioner, the judgment complained of shall be set aside and the defendant shall be granted a new trial in that cause.

Tenn. Code Ann. § 40-26-105. The writ of error coram nobis is an "extraordinary procedural remedy, 'filling only a' slight gap into which few cases fall." State v. Mixon, 983 S.W.2d 661, 672 (Tenn. 1999). The "purpose of this remedy 'is to bring to the attention of the court some fact

[1] The petitioner's case was remanded for correction of a clerical error in the trial court minutes and judgment forms on two counts. Ladonte Montez Smith, 1999 WL 1210813, at *23.

unknown to the court which if known would have resulted in a different judgment.'" State v. Hart, 911 S.W.2d 371, 374 (Tenn. Crim. App. 1995) (quoting State ex rel. Carlson v. State, 219 Tenn. 80, 407 S.W.2d 165, 167 (1966)). The decision to grant or deny a petition for writ of error coram nobis rests within the sound discretion of the trial court. Teague v. State, 772 S.W.2d 915, 921 (Tenn. Crim. App. 1988), overruled on other grounds by, Mixon, 983 S.W.2d at 671 n.3.

A petition for writ of error coram nobis must relate: (1) the grounds and the nature of the newly discovered evidence; (2) why the admissibility of the newly discovered evidence may have resulted in a different judgment had the evidence been admitted at the previous trial; (3) that the petitioner was without fault in failing to present the newly-discovered evidence at the appropriate time; and (4) the relief sought by the petitioner. Hart, 911 S.W.2d at 374-75. A petition for writ of error coram nobis must usually be filed within one year after the judgment becomes final. See Tenn. Code Ann. § 27-7-103; Mixon, 983 S.W.2d at 670. It has been determined that a judgment becomes final, for purposes of coram nobis relief, thirty days after the entry of the judgment in the trial court if no post-trial motion is filed, or upon entry of an order disposing of a timely-filed, post-trial motion. Mixon, 983 S.W.2d at 670. The one year statute of limitations may be tolled only when necessary not to offend due process requirements. Workman v. State, 41 S.W.3d 100, 103 (Tenn. 2001).

> The grounds for seeking a petition for writ of error coram nobis are not limited to specific categories, as are the grounds for reopening a post-conviction petition. Coram nobis claims may be based upon any "newly discovered evidence relating to matters litigated at the trial" so long as the petitioner also establishes that the petitioner was "without fault" in failing to present the evidence at the proper time. Coram nobis claims therefore are singularly fact-intensive. Unlike motions to reopen, coram nobis claims are not easily resolved on the face of the petition and often require a hearing. The coram nobis statute also does not contain provisions for summary disposition or expedited appeals . . . . Although coram nobis claims also are governed by a one-year statute of limitations, the State bears the burden of raising the bar of the statute of limitations as an affirmative defense. See Sands v. State, 903 S.W.2d 297, 299 (Tenn.1995).

Harris v. State, 102 S.W.3d 587, 592-93 (Tenn. 2003).

The trial court dismissed the petition because it was filed more than eight years after the judgment of conviction became final. Clearly, the petition was filed outside the statute of limitations. However, the petitioner also argues that the newly-discovered evidence would result in a different jury verdict, therefore, the statute of limitations should be tolled.

The newly-discovered evidence which is the subject of the petition is a letter allegedly written by a witness from the petitioner's trial. This letter was supposedly written by the witness, Gary Jordan, who sent the letter to Orlando Rheems. This letter was then allegedly given to Ladonte Montez Smith, who sent it to the petitioner. The letter states that the witness, did not actually know

the petitioner and was coerced into testifying against the petitioner because the police, the district attorney and his own defense attorney were promising him he would not get the death penalty. In his petition, the petitioner states that the witness was the only eyewitness to the crime and this informal recantation would result in a judgment of acquittal.

The trial court stated in its order dismissing the petition, that the letter is not actually newly-discovered evidence because the petitioner has asserted throughout his trial and appeals that Mr. Jordan was lying at trial. At the trial itself, the petitioner testified and stated that he had never met Mr. Jordan. Ladonte Montez Smith, 1999 WL 1210813, *5. In his petition for post-conviction relief, the petitioner argued that the State failed to correct alleged perjured testimony of Mr. Jordan. Joe Davis Martin, 2004 WL 438328, *12-13. This Court stated that Mr. Jordan's testimony at trial was consistent with his statements to the police and held that the petitioner failed to demonstrate that the challenged testimony of Mr. Jordan would have affected the jury's verdict. Id. at *13. Therefore, this Court affirmed the post-conviction court's denial of his post-conviction petition.

We agree with the trial court that the petitioner has presented no persuasive argument that the unauthenticated letter which was allegedly written by Mr. Jordan would change the outcome of the trial. The petitioner was allowed at trial to testify that he did not know Mr. Jordan. The jury obviously did not find the petitioner truthful. In addition, there was another witness, Arnett Hayes, who placed the petitioner with his co-defendants immediately before the shooting. The petitioner has not shown that there is a violation of his due process rights so that the statute of limitations should be tolled.

Conclusion

The trial court was correct in dismissing the petition for writ of error coram nobis. The writ was filed outside the statute of limitations, and the petitioner has not shown sufficient reason to toll the statute. Rule 20 of the Rules of the Court of Criminal Appeals provides:

> The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:
>
> > (1)(a) The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a determination of guilt, and the evidence does not preponderate against the findings of the trial judge . . . .

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, and we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE